City of Seattle

Gregory J. Nickels, Mayor
Department of Planning and Development
D.M. Sugimura, Director

CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR
OF THE DEPARTMENT OF PLANNING AND DEVELOPMENT

Application Number: 2202861

Applicant Name: Eric Friedli, Seattle Department of Parks and Recreation

Address of Proposal: 7400 Sand Point Way NE

SUMMARY OF PROPOSED ACTION

Shoreline Substantial Development Permit for shoreline work at an off leash dog park in the shoreline of Lake Washington at Magnuson Park. The shoreline will be graded to achieve a 5 percent slope, native vegetation will be planted along the shoreline and pea gravel and sand substrate will be added along the shoreline. Environmental documents prepared by the Seattle Department of Parks and Recreation (DOPAR).

The following approvals are required:

Shoreline Substantial Development Permit: For grading, fill, vegetation planting, path development and two structures at the Magnuson Park Off-Leash Area (OLA) located along Lake Washington in the Conservancy Management and the Conservancy Recreation Shoreline Environment.
(Section 23.60.020A Seattle Municipal Code)

SEPA - To impose conditions. Chapter 25.05, Seattle Municipal Code.
(DNS prepared by Seattle Department of Parks and Recreation)

SEPA DETERMINATION: [ ] Exempt [ ] DNS [ ] MDNS [ ] EIS

[X] DNS with conditions*

[ ] DNS involving non-exempt grading or demolition or involving another agency with jurisdiction

*Determination of non-significance issued by the Seattle Department of Parks and Recreation on February 15, 2002.

BACKGROUND DATA

Site Location and Description

The proposal site is located at 7400 Sand Point Way NE in Magnuson Park on the west shore of Lake Washington. The site is an irregularly shaped parcel with the long axis of the parcel running along the west shore of Lake Washington. The total length of shoreline on this parcel is approximately 5,000 lineal feet. The parcel is between the former Sand Pont Naval Station, which is now owned by the Seattle Parks Department and the National Marine Fisheries Services offices, on the northern boundary and several vacant single-family parcels on the southern boundary of Magnuson Park. The proposed project site is a 29,750 sf area along 175 lineal feet of the Lake Washington shoreline located on the northeast boundary of Magnuson Park.

Zoning

Single Family 9600 (SF 9600) with a split shoreline zone with a Conservancy Management (CM) designation on the northern 7,650 sf of the project area and a Conservancy Recreation (CR) designation on the remaining 22,100 sf of the project area.

Area Development and Zoning

North: Former Naval Station Buildings and NOAA Fisheries Offices; Single Family 7200 (SF 7200) and CM Shoreline Master Program designation
East: Lake Washington; CM Shoreline Master Program designation
South: Single-family vacant parcels; SF 9600 Urban Residential (UR) /CR Shoreline Master Program designations
West: Sand Point Park; SF 7200

Establishment of Off Leash Area

In December of 1997 the City Council Adopted the Permanent Dogs-Off-Leash Program (Resolution 29628), which established the Magnuson off-leash are as temporary site until a plan could be adopted for Magnuson Park/Sand Point. The Magnuson Park/Sand Point plan would establish a permanent site located within the park. In November of 1999 the City Council adopted the Magnuson Park Conceptual Design (Resolution 30063) which identified the preferred location and boundaries of both the upland and the shoreline portions of the Magnuson Park Off Leash Area (OLA) and in October of 2001 City Council passed Ordinance 12594, which established the upland boundaries of the off-leash dog park.

Project Description

In response to the City Council Resolutions and Ordinance the proposed project would expand and modify the existing shoreline off leash area, increase shoreline access and complete identified general work such as the installation of the lighting in portions of the OLA. The existing OLA includes a 175 feet area along the shoreline and extends 170 feet inland. The following specific actions are proposed:

Shoreline

- Grade the shoreline back 60 to 80 feet to create a gentler uniform slope of 5 percent.

- Cover the beach area that is landward of ordinary high water (OHW) with 55 to 100 cubic yards of washed pea gravel 6 to 12 inches deep.
- Along the north edge, the shoreline would be stabilized using a vegetated geogrid. The vegetated geogrid included toe rock to stabilize the base of the slope below the OHW line where woody vegetation is unable to grow due to submersion. Alternating layers of soil wrapped in fabric (18 inches thick) and topsoil with live willow cuttings (6 inches thick) would be placed above the toe rock. Once established, the willow roots would bind both types of layers into one matrix that is highly resistant to erosion.
- Several large boulders would be placed on the beach above the winter low water mark to act as "traffic calming" obstacles for the dogs.
- Existing blackberry brambles would be removed and replaced with areas of native grass and other native vegetation such as vine maple, Indian plum, snowberry, and swordfern.

Shoreline Access

- An asphalt-covered path would be constructed in the high-use area of the OLA to provide increased access to the shoreline. This path would meet the requirements for accessibility determined by the American with Disabilities Act (ADA).
- A 25 by 25 foot observation deck would be constructed surrounding an existing willow tree on the upland area of the shoreline above the OHW line of the Lake.
- A 15-feet wooden boardwalk path leading to the observation deck is proposed. This path would meet ADA requirements.

General

- A 16 by 32-foot picnic shelter would be constructed on an asphalt surface in the high-use portion of the project area. A water faucet will be installed near this picnic area.
- A lighting system would be installed throughout the OLA in two separate parts consisting of the path surrounding the upland meadow. No lights will be placed on the path down to the shoreline.

The proposed project construction would require the use of a variety of equipment types including front-end loaders, excavators, and graders. The shoreline would be graded back to a gentler gradient and covered with the pea gravel. The large boulders would be placed above the OLW. Access paths, the picnic shelter and observation deck will also be constructed in the upland area adjacent to the shoreline. All the vegetation contained within the area would be removed, with the exception on the mature weeping willow, birch and fruit tree.

No in-water work will take place between November 1 and July 15 to minimize construction impacts on juvenile salmon and bull trout.

Public Comment

Thirty-six e-mails were received during the comment period that ended on November 29, 2002. These thirty-six e-mails were in support of the project.

ANALYSIS - SHORELINE SUBSTANTIAL DEVELOPMENT

Section 23.60.030 of the Seattle Municipal Code provides criteria for review of a shoreline substantial development permit and reads: A *substantial development permit shall be issued only when the development proposed is consistent with:*

A. The policies and procedures of Chapter 90.58 RCW;

B. The regulations of Chapter 23.60; and

C. The provisions of Chapter 173-27 WAC

Conditions may be attached to the approval of a permit as necessary to assure consistency of the proposed development with the Seattle Shoreline Master Program and the Shoreline Management Act.

A. The Policies and Procedures of Chapter 90.58 RCW

Chapter 90.58 RCW is known as the Shoreline Management Act of 1971. It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy aims to protect against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting public rights of navigation and corollary incidental rights. Permitted uses in the shorelines shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.

The Shoreline Management Act provides definitions and concepts, and gives primary responsibility for initiating and administering the regulatory program of the Act to local governments. The Department of Ecology is to primarily act in a supportive and review capacity, with primary emphasis on insuring compliance with the policy and provisions of the Act. As a result of this Act, the City of Seattle and other jurisdictions with shorelines, adopted a local shoreline master program, codified in the Seattle Municipal Code at Chapter 23.60 that also incorporates the provisions of Chapter 173.27 WAC. Development on the shorelines of the state is not to be undertaken unless it is consistent with the policies and provisions of the Act, and with the local master program. The Act sets out procedures, such as public notice and appeal requirements, and penalties for violating its provisions. As the following analysis will demonstrate, the subject proposal is consistent with the procedures outlined in RCW 90.58.

B. The Regulations of Chapter 23.60

Chapter 23.60 of the Seattle Municipal Code is known as the "Seattle Shoreline Master Program". In evaluating requests for substantial development permits, the Director must determine that a proposed use meets the approval criteria set forth in SMC 23.60.030 (cited above). Development standards of the shoreline environment and underlying zone must be considered, and a determination made as to any special requirements (shoreline conditional use, shoreline variance, or shoreline special use permit) or conditioning that is necessary to protect and enhance the shorelines area (SMC 23.60.064). In order to obtain a shoreline substantial development permit, the applicant must show that the proposal is consistent with the shoreline policies as referenced in SMC 23.60.004, meets the development standards for all shoreline

environments established in SMC 23.60.152 as well as the criteria and development standards for the shoreline environment in which the site is located, any applicable special approval criteria and the development standards for specific uses.

The site is classified as a waterfront lot (SMC 23.60.924). The northern one-quarter of the site has a Conservancy Management (CM) shoreline designation including the adjacent submerged area of the site. The southern three-quarters of the site has a Conservancy Recreation (CR) (SMC 23.60.360) designation including the adjacent submerged area of the site. The use at this site is established as a park and is permitted outright in these two shoreline environments.

SMC 23.60.004 - Shoreline Policies

The Shoreline Goals and Policies which are part of the Seattle Comprehensive Plan's Land Use Element and the purpose and locational criteria for each shoreline environment designation contained in SMC 23.60.220 must be considered in making all discretionary decisions in the shoreline district. The purpose of the CR environment is stated in SMC 23.60.220.C 3. The applicable sections of this regulation to the current proposal are: in the Conservancy Recreation Environment: maximum effort to preserve, enhance or restore the existing natural ecological, biological, or hydrological conditions shall be made in designing, developing, operating and maintaining recreational facilities.

The purposed of the CM Environment is stated in SMC 23.60.220. C. 4. The purpose of the CM shoreline environment is to conserve and manage areas for public purposes, recreational activities and fish migration routes. While the natural environment need not be maintained in a pure state, developments shall be designed to minimize adverse impacts to natural beaches, migratory fish routes and the surrounding community.

SMC 23.60.152 - Development Standards for all Environments

These general standards apply to all uses in the shoreline environment. They require that design and construction of all uses be conducted in an environmentally sound manner, consistent with the Shoreline Management Program and with best management practices for the specific use or activity. All shoreline development and uses must, in part:

1) minimize and control any increases in surface water runoff so that receiving water quality and shore properties are not adversely affected;

2) control erosion during project construction and operation;

3) be located, designed, constructed, and managed to avoid disturbance, minimize adverse impacts and protect fish and wildlife habitat conservation areas, including but not limited to, spawning, nesting, rearing and habitat areas, commercial and recreational shellfish areas, kelp and eel grass beds, and migratory routes. Where avoidance of adverse impacts is not practicable, project mitigation measures relating the type, quantity and extent of mitigation to the protection of species and habitat functions may be approved by the Director in consultation with state resource management agencies and federally recognized tribes.

4) be located, designed, constructed and managed to minimize interference with or adverse impacts to beneficial natural shoreline processes such as water circulation, littoral drift, sand movement, erosion and accretion.

5) be designed, constructed and managed in a manner that minimizes adverse impacts to surrounding land and water uses and is compatible with the affected area;

6) be located and designed to minimize or prevent the need for shoreline defense and stabilization measures and flood protection works such as bulkheads, other bank stabilization landfills, levees, dikes, groins, jetties, or substantial site regrades.

The proposed recreational use as conditioned including the proposed mitigation, is consistent with these general standards for development within the shoreline area, thereby minimizing any adverse impact to the shoreline environment, to water quality, to the natural shoreline processes, and the surrounding land and water uses.

SMC 23.60.390 and 23.60.450 - Development Standards for the CR and CM Environments

The development standard for the CR environment pertinent to this proposal is as follows: Natural area protection of the CR environment requires that all developments in this environment be located and designed to minimize adverse impacts to natural areas of biological significance and that development in critical natural areas be minimized.

The development standard for the CM environment pertinent to this proposal is as follows: All developments in the CM Environment shall be located and designed to minimize disturbance of any critical habitat area. "Critical habitat areas" include salt or fresh water marshes, swamps, bogs, eel grass areas, kelp beds, streams, fish spawning areas, and other habitats.

Critical areas include fish rearing, fish refuge, fish migration route and bald eagle foraging. This area of Lake Washington is a migration route and rearing area for juvenile Puget Sound Chinook Salmon and as a foraging area for bald eagles. The submittal information outlines mitigation measures and construction practices that must be followed to minimize the impacts on juvenile chinook salmon and the aquatic environment.

Also of concern for natural area protection is the impact of the simplification of the nearshore lake environment, which eliminates the amount of habitat available for juvenile chinook to find refuge from predators and eliminates prey input from terrestrial sources. Ideal refuge for juvenile chinook is shallow water that allows the juveniles to escape from predation by larger fish. Complexity in the shallow water habitat in the form of overhanging vegetation, a sinuous shoreline, and woody debris in the very shallow areas provides a terrestrial prey source and refuge in the form of undercut banks and interstitial spaces for the juvenile salmon.

Impacts on the fish habitat and the lake environment will be minimized by a number of techniques. In-water and shoreline enhancements will be made and include the grading of the shoreline to establish a 5 percent slope, substrate amendment with pea gravel, and native riparian vegetation planting. A vegetation monitoring plan is required. The purpose of the vegetation monitoring plan is to assure eighty (80) percent survival of the terrestrial vegetation. Additionally due to the impacts caused by the dogs using this area of the shoreline a 175-ft shoreline area immediately south of this site will be enhanced with native vegetation.

Regulated public access in the CR and CM Environment - SMC 23.60.400 and 23.60.460

Public access meeting the criteria of Section 23.60.160 shall be provided and maintained on all publicly owned and publicly controlled waterfront whether leased to private lessees or not, except when the property is submerged land which does not abut dry land.

This project meets the criteria for public access for public projects in the CR and CM environments.

C. The Provisions of Chapter 173-27 WAC

WAC 173-27 establishes basic rules for the permit system to be adopted by local governments, pursuant to the language of RCW 90.58. It provides the framework for permits to be administered by local governments, including time requirements of permits, revisions to permits, notice of application, formats for permits, and provisions for review by the state's Department of Ecology (DOE). Since the Seattle Shoreline Master Program has been approved by DOE, consistency with the criteria and procedures of SMC Chapter 23.60 is also consistent with WAC 173-14 and RCW 90.58. As discussed in the foregoing analysis, the proposal is consistent with the criteria for a shoreline substantial development permit and the special use criteria for this environment and may be approved.

DECISION - SHORELINE SUBSTANTIAL DEVELOPMENT

The Shoreline Substantial Development permit is **CONDITIONALLY GRANTED**. Conditions are listed at the end of this report.

ANALYSIS - SEPA

Environmental impacts of the proposal have been analyzed in environmental documents prepared by Seattle Department of Parks, Recreation ("DOPAR") including a Biological Evaluation dated January 2002, and an Environmental Checklist (RCW 197-11-960) dated January 22, 2002. After receiving public comment, DOPAR issued a SEPA Determination of Non-significance ("DNS") dated February 15, 2002.

Seattle Municipal Code (SMC) Section 25.05.660 provides that proposals can be conditioned or denied in order to mitigate environmental impacts. All conditions must be related to impacts identified in the environmental documents, based on adopted policies, be reasonable and capable of being accomplished. This proposal is reviewed under that substantive SEPA authority.

Disclosure of the potential impacts from this project was made in the environmental documents listed above. This information and supplemental information provided by the applicant (plans, written descriptions of the project) a field visit and the experience of this agency with review of similar projects form the basis for this analysis and conditioning.

The SEPA Overview Policy (SMC 25.05.665) establishes the relationship between codes, policies, and environmental review. Specific policies for specific elements of the environment, certain neighborhood plans, and other policies explicitly referenced may serve as the basis for

exercising substantive SEPA authority. The Overview Policy states, in part, *"Where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation"* subject to some limitations. Under such limitations or circumstances (SMC 25.05.665 D) mitigation can be considered. Thus, a more detailed discussion of some of the impacts is appropriate. Short-term and long-term impacts are anticipated from the proposal and are discussed below.

Short-term Impacts

The following temporary or construction-related impacts are expected: temporary increase in noise levels, increase in water turbidity levels, increased levels of fugitive dust and fumes from the construction equipment, disturbance of shorelines and displacement of some fish wildlife species due to increased water turbidity levels and increased noise from the construction activities. Due to the temporary nature and limited scope of these impacts, they are not considered significant (SMC 25.05.794). Although not significant, these impacts are adverse and, in some cases, mitigation may be warranted.

Several adopted codes and/or ordinances provide mitigation for some of the identified impacts. Specifically these are: the Seattle Noise Ordinance (construction noise); and State Air Quality Codes administered by the Puget Sound Air Pollution Control Agency (air quality). In addition Federal and State regulations and permitting authority (Section 10 Permit, 404 Permit from the Army Corps and HPA permit from Washington Department of Fish and Wildlife) are effective to control short-term impacts on water quality. Compliance with these codes and/or ordinances will lessen the environmental impacts of the proposed project.

The applicant's SEPA Checklist discloses that the proposed construction work will take place in the waters of Lake Washington. Additionally, construction material will be delivered by barge over-water. With the proposed work taking place in and adjacent to water and the delivery of construction material taking place over-water, there exists the potential for debris and other deleterious material to enter the water during this proposed work. Best management practices (BMPs) should be employed to decrease the probability of debris or other deleterious material from entering the water during the proposed work. A floating silt curtain should be deployed around the construction area to contain the turbid water and any debris that enters the water during construction. At a minimum the floating debris that enters the water during construction should be collected once per day. This material should be contained on site and then disposed of at the appropriate upland facility.

Construction impacts to the lake environment will be mitigated by construction company procedures, Washington Department of Fish, and Wildlife's restrictions on construction times. Specifically, the construction work that will take place on the shoreline will use best management practices such as silt fences that will be placed around the perimeter of the work area to contain erosion and turbid water in the work area.

Construction material and equipment pose some potential danger of water and near shore contamination and shoreline erosion. The contamination and erosion could lead to both water quality and aquatic habitat damage. In order to be prepared to provide a fast and effective response to spills or other actions which cause new contaminants to be introduced into the shoreline environment, it is necessary to condition the project to require that prior to

commencing construction an emergency containment plan and procedures be developed and all necessary equipment be stocked on the site.

No further SEPA conditioning of potential short-term impacts appears to be warranted.

Long-term Impacts

Long-term or use related impacts to the shoreline environment are also anticipated from the proposal and include: a continued use of the nearshore lake and shoreline environment for recreation by dogs; non-native landscaping in the form of a grass and increased pervious surface in the form of a asphalt paths and asphalt surfaces for the construction of a picnic shelter and observation area. These long-term impacts are potentially significant without mitigation; therefore, merit a detailed discussion of the impacts and the required mitigation.

Plants and Animals

Chinook salmon, a species listed as threatened under the Endangered Species Act (ESA) in March 1999, are known to inhabit Lake Washington including the proposed project area. Under the City of Seattle's Environmental Policies and Procedures 25.05.675 N (2) it states in part: *A high priority shall also be given to meeting the needs of state and federal threatened, endangered, and sensitive species of both plants and animals.*

This project is proposed to occur in the littoral (shallow water) areas of Lake Washington. The littoral area is part of the migration corridor of chinook salmon and serves as rearing habitat for juvenile chinook salmon from the Sammamish River and Issaquah and Bear Creeks and potentially other water bodies in Water Resource Inventory Area 8.

Long-term impacts on juvenile chinook salmon and the aquatic environment include disturbance in the littoral aquatic area by dogs. Additionally, the use of non-native vegetation in the form of a lawn and impervious surface in the shoreline environment decreases the shoreline habitat for both native aquatic and terrestrial animals. While the beach area is being used by dogs at the park the juvenile salmon will be disturbed and will most likely not use this area during the time when both juvenile salmon and dog use overlap. The timing of use by both dog and juvenile chinook salmon use potentially is February through July 15th. By July 15th the majority of juvenile chinook salmon have migrated past this site.

As provided by SMC 25.05.350 C, and 25.05.675 N 2 c, the lead agency may specify mitigation measures on a proposal that would allow the lead agency to issue a Determination of Non-Significance (DNS). These mitigation measures can be in the form of clarification of the proposal, changes to the proposal, or the project may be conditioned to include the mitigation measures. The Department of Parks and Recreation, as the lead agency, included some mitigation measures in the project and issued a DNS on this project. DPD through their review process for substantive compliance and conditioning has imposed additional conditions on this project. These mitigation measures and conditions are listed below.

- Re-grading the shoreline to a 5 percent slope and adding pea gravel at the shoreline to reduce the amount of erosion that occurs at the site.
- Plant native vegetation along the shoreline.

- Prepare a vegetation monitoring plan to ensure eighty (80) percent survival of the vegetation planted at five years from when planting occurs.
- Enhance a 175-ft area of shoreline at the adjacent area south of this site.
- Require that dog owners scoop and dispose dog feces so that the feces does not enter the water
- Fence the area so that dogs are not allowed to use adjacent shoreline areas so that disturbance by the dogs is contained.

Each of these mitigation measures and conditions are intended to minimize impacts on juvenile salmon habitat or improve the aquatic habitat at the site. Collectively they are believed to help improve the nearshore lake environment by increasing the complexity of the shoreline. The riparian vegetation planted along the shoreline will increase the allocthonous input of insects and detritus to Lake Washington providing food for juvenile salmonids and nutrients for other aquatic organisms. In addition, the substrate amendment actions and re-grading of the shoreline site will decrease the amount of erosion caused by the use of the site by the dogs.

SEPA AND SHORELINE CONDITIONS

Prior to Issuance of MUP

1. A Spill Prevention and Response Plan shall be developed and submitted to DPD.
2. Vegetation shall be monitored to ensure eighty (80) percent or greater survival of the vegetation planted after five (5) years from the time of planting for all vegetation planted in association with this MUP approval. Contingency measures shall include replacement with similar native species of plants that do not survive. A monitoring plan shall be submitted to DPD.
3. Develop signage that informs dog owners of the requirement to scoop and dispose of their dog feces at the appropriate garbage disposal sites so that dog feces does not enter the water. Design of the signage shall be submitted to DPD.
4. Develop signage at the dog park to educate the dog owners and other users of the OLA about the importance of the aquatic shoreline habitat for juvenile chinook and other salmon and trout and to inform the users of how they can minimize their impacts on this habitat. Design of the signage shall be submitted to DPD.

Prior to Commencement of Proposed Work

5. Department of Parks and Recreation and/or responsible party(ies) shall notify in writing all contractors and sub-contractors of the general requirements of the Seattle Shoreline Master Program (SSMP 23.60.152), including the requirements set forth in conditions of the MUP.

Construction Conditions

The following conditions(s) to be enforced during construction shall be posted at the site in a location on the property line that is visible and accessible to the public and to construction personnel from the street right-of-way. If more than one street abuts the site, conditions shall be posted at each street. The conditions will be affixed to placards prepared by DCLU. The placards will be issued along with the Master Use Permit set of plans. The placards shall be laminated with clear plastic or other waterproofing material and shall remain posted on-site for the duration of the construction.

6. Employ appropriate best management practices (BMPs) to prevent material from entering Lake Washington during the proposed in and adjacent to water work. BMPs shall include the deployment of a silt curtain surrounding the construction area. The curtain shall remain in place for the duration of the proposed work.

    a. The silt curtain shall serve to contain the turbid water and any floating debris that may enter the water during the proposed work. If floating debris enters the water, this debris shall be removed from the water daily, stored on-site, and then disposed of in the appropriate upland facility.

    b. If heavy (sinking) debris enters the water during the proposed work the location of the debris shall be documented in a log to be kept through the duration of the project. When construction is complete a diver shall retrieve all debris that has entered the water and sunk during construction.

7. In compliance with the Spill Prevention and Response Plan, measures described in the plan shall be employed by all personnel working at the site to prevent toxic materials, petrochemicals and other pollutants from entering surface water during the proposed construction work. The Spill Prevention and Response Plan document and the appropriate materials for quick response to any toxic spills shall be kept at the site.

8. Fence the boundaries of the dog shoreline access area so that the water access by the dogs is contained to the specified area.

9. Install signs that provide information that informs dog owners of the requirement to scoop and dispose of their dog feces at the appropriate garbage disposal sites so that dog feces does not enter the water.

10. Install signs that educate the dog owners and other users of the OLA about the importance of the aquatic shoreline habitat for juvenile chinook and other salmon and trout and to inform the users of how they can minimize their impacts on this habitat.

Signature: (signature on file) Date: March 18, 2004
Margaret M. Glowacki, Fisheries Biologist/Salmon Planner
Department of Planning and Development
Land Use Services

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